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STATE PASS TO USTR FOR BWEISEL AND DKATZ
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SUBJECT: GRP DISCUSSES PLANS TO CURB CABLE TV PIRACY

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SUMMARY

¶1. (SBU) In an Embassy roundtable discussion on cable piracy issues, Commissioner Solis of the National Telecommunications Commission (NTC) told private sector participants that he expects to sign a Memorandum of Agreement (MOA) in June with the Intellectual Property Office (IPO) that would clarify jurisdictional issues that have impeded effective enforcement of IP rights. Effective implementation of the MOA would be a significant achievement in combating piracy in the cable and satellite broadcasting industries. Industry representatives welcomed the news on the MOA and were eager to explore ways to work with the GRP to improve the IP regime. Although the relationship between the industry and NTC has been contentious in the past, the meeting was forward-looking and set the stage for collaboration in the months ahead. END SUMMARY.

EMBASSY ORGANIZES DISCUSSION ON CABLE PIRACY

¶2. (U) The Embassy organized a roundtable discussion on cable piracy on May 12 for U.S. stakeholders to raise concerns constructively and to provide an opportunity for GRP officials to discuss initiatives aimed at improving the intellectual property environment for cable and satellite television broadcasters. Ronald Solis, Commissioner of the National Telecommunications Commission, led the GRP team which was composed of Deputy Commissioner Jaime Fortes and several lawyers from both the NTC and the Intellectual Property Office (IPO). Private sector stakeholders were represented by the Cable and Satellite Broadcast Association of Asia (CASBAA) and representatives from Star TV, Time Warner, and Walt Disney. Econ and Commercial Officers kept the focus on enforcement issues and served as moderators.

BACKGROUND

¶3. (U) CASBAA estimated that its constituents lose over \$80 million annually to cable signal theft in the Philippines. In its most recent Special 301

submission, CASBAA argued to keep the Philippines on the Priority Watch List, citing the GRP's lack of action or assistance in defending intellectual property rights within that sector. CASBAA is actively engaged in promoting better IPR protection in the Philippines through targeted raids, collaboration with the GRP on enforcement, and public education campaigns. However, CASBAA representatives have expressed frustration in dealing with the GRP, and specifically the NTC, on cable piracy issues.

14. (SBU) CASBAA released a study entitled "Regulating for Growth" in March 2006, which claimed that "the most problematic aspect of the situation in the Philippines is the tacit toleration of rampant intellectual property piracy." Furthermore, "the NTC, which is the prime regulatory body, lacks a clear mandate and resources to enforce the laws on intellectual property." While CASBAA contends that the study was meant to be constructive, local press coverage put a negative spin on CASBAA's comments and described it as "rebuking" the NTC. Senior NTC officials, including Commissioner Solis, were publicly offended and embarrassed, leaving CASBAA with minimal access to GRP officials. Subsequently, Emboffs offered to organize a three-way discussion with Emboffs, CASBAA and GRP officials to discuss next steps and identify actions to which the GRP would be willing to commit.

GRP NEARS AGREEMENT ON JURISDICTION OVER CABLE PIRACY

15. (SBU) Commissioner Solis said that his main purpose

MANILA 00002167 002 OF 003

in attending the Roundtable was to listen to concerned stakeholders. He noted that his biggest challenge with respect to cable piracy is the NTC's lack of mandate and unclear jurisdiction. While NTC has the ability to revoke or deny licenses to cable operators, it does not have the expertise or authority necessary to rule on whether there is infringement. As a result, Solis has been working closely with the IPO for several months on a Memorandum of Agreement (MOA) intended to clarify these jurisdictional issues and outline procedures for alleged cable broadcast piracy cases. Solis expects to sign the MOA in June.

16. (SBU) Under the MOA, NTC would be responsible for denying or revoking licenses while the IPO would handle infringement cases. Procedurally, a complainant would file an initial complaint of alleged infringement with the NTC. After registering the case, the NTC would forward it to the IPO for an infringement determination. The IPO would review the case and issue a recommendation to NTC advising on whether infringement exists and recommending any necessary sanctions to NTC. Solis assured stakeholders that NTC would abide by whatever recommendation IPO deemed appropriate.

CABLE INDUSTRY EAGER TO WORK TOGETHER

17. (SBU) CASBAA told Solis that the cable industry had been "very heartened" to hear positive news from the Philippines in recent weeks on cable and satellite broadcast issues. CASBAA noted that the judiciary is considering a major piracy case that could set the precedent for such cases. In addition, CASBAA has been encouraged by the fact that a local cable broadcaster, Destiny Cable, stopped broadcasting illegal programming after receiving a "Cease and Desist" order from the NTC. CASBAA also said that the new MOA is very

encouraging to the industry and "fantastic news." CASBAA emphasized that it is seeking opportunities to dialogue with the GRP as well as new ways to work together, both formally and informally, noting that the a strong communications industry is at the heart of strong economic development.

18. (SBU) Other cable broadcast representatives expressed similar sentiment with respect to the MOA, but voiced concern over implementation, particularly the potentially lengthy processing requirements. NTC and IPO estimated that a case could take one to two years for processing. Solis added that "in the interest of transparency and collaboration," he would be willing to sit down with stakeholders and review the MOA before it is signed in order to identify potential issues. He could not offer any assurances that all suggestions would be incorporated, but said that it could be useful to discuss some of these issues before the MOA is signed into force.

19. (SBU) Solis assured stakeholders that he wants to see "pay-tv flourish in the Philippines in the same way it is flourishing in the rest of Asia, but that (the GRP) will have to do it within its means." CASBAA offered assistance in publishing data and statistics to visibly demonstrate the impact a growing pay-tv industry could have on the economy, as reflected in increased sales, tax revenues, and jobs. Solis said that any assistance is welcome and suggested that CASBAA might also want to lobby Congress on a draft bill (already submitted in the House) that would reorganize the NTC, expand its powers, and allocate additional resources. In view of these developments, CASBAA offered to provide training and technical assistance to GRP officials.

COMMENT

110. (SBU) While the GRP has made progress on improving protection of intellectual property rights over the last year, which resulted in moving the RP from the Special 301 Priority Watch List to the Watch List in February 2006, it has yet to focus on improving the

MANILA 00002167 003 OF 003

regulatory environment for cable and satellite broadcasters. This roundtable discussion brought stakeholders together with key policymakers in a forum where issues could be aired and discussion could turn to constructive ways to work together to solve problems. In particular, the dialogue reduced lingering tension and mistrust between the two sides, and all parties agreed to work together in concrete ways to improve the IP system.

111. (SBU) The MOA has been under discussion for more than a year, including with the USG. The cable and satellite broadcast industry was encouraged by NTC's assurances that it would be signed in the near future since taking concrete action against cable theft has been severely constrained due to jurisdictional ambiguities. The Embassy has frequently urged GRP officials to address cable signal piracy as part of its broader program to improve its IP regime. One of the items included in the USG's IPR Action Plan for the Philippines, under the Special 301 process, is an improved regulatory environment for cable and satellite TV broadcasters. Implementation of the MOA would be a significant step forward.